

# Notice of Allowability

Application No.

10/806,188

Examiner

Richard R. Shaffer

Applicant(s)

DALLARA ET AL.

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the AMENDMENT filed on 16 November 2006.
2. ☒ The allowed claim(s) is/are 1,3-5 and 7-12.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.


Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 12/18/2006.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER

  
Richard Shaffer  
December 18<sup>th</sup>, 2006

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael de Angeli on December 18<sup>th</sup>, 2006 in which inserting the limitations of claims 2 and 13 into claims 1 and 11 respectively would put the case in conditions for allowance.

#### **The application has been amended as follows:**

**Claim 1:** A tool for fitting into a tunnel in bone and for being expanded so as to compact the bone surrounding the tunnel, comprising:

a plurality of segments, each comprising an elongated distal portion and a proximal hub portion,

a knob for receiving said proximal hub portions of said segments, so that when said segments are assembled to said knob the elongated distal portions of said segments together define an elongated generally cylindrical member extending distally away from said knob on one side thereof, said elongated generally cylindrical member having an axis, and fitting within said tunnel, said knob and said hub portions together defining structure whereby said segments are constrained to move generally inwardly and outwardly with respect to said axis while remaining substantially parallel thereto, such that said elongated generally cylindrical member is increased in diameter as said

Art Unit: 3733

segments move outwardly with respect to said axis while remaining parallel to one another, and

means operable from a position on the opposite side of said knob from said elongated generally cylindrical member for causing said segments to move outwardly with respect to said axis, whereby said bone surrounding said tunnel is compacted permanently by said outwardly-moving segments so that a generally cylindrical bore, larger than said tunnel, is formed in the bone; and

wherein each of said segments comprises elongated inner and outer surfaces, and wherein said means operable from a position on the opposite side of said knob from said elongated member comprises a tapered central member fitting within a cooperatively tapered lumen formed about said axis by the inner surfaces of said segments, whereby when said central member is moved distally along said lumen said segments are forced outwardly, while remaining parallel to one another.

**Claim 2: Cancel Claim 2**

**Claim 3:** The tool of claim [2] 1, wherein said central member defines two tapered surfaces joined by a cylindrical section, and said lumen defines two angled cylindrical surfaces joined by a cylindrical section.

**Claim 5:** The tool of claim [2] 1, wherein said central member and said knob have corresponding threads formed thereon, whereby turning said central member with respect to said knob urges said central member axially along said lumen, whereby said segments are forced outwardly.

**Claim 6: Cancel Claim 6**

**Claim 11:** A method for dilating the wall of a tunnel in bone, comprising the steps of:

inserting an elongated section of a tool for dilation into said tunnel, said tool comprising:

a plurality of segments, each comprising an elongated portion and a hub portion, a knob for receiving said hub portions of said segments, so that when said segments are assembled to said knob the elongated portions of said segments together define an elongated member extending away from said knob on one side thereof, having an axis, and fitting within said tunnel, said knob and said hub portions together defining structure whereby said segments are constrained to move generally inwardly and outwardly with respect to said axis, while remaining substantially parallel thereto, and

operating means operable from a position on the opposite side of said knob from said elongated member for causing said segments to move outwardly with respect to said axis, said operating means comprising a tapered central member fitting within a cooperatively shaped lumen formed about said axis by the inner surfaces of said segments, said central member and said knob have corresponding threads formed thereon, and

~~operating said operating means in order to cause said segments to move outwardly with respect to said axis,~~ engaging said corresponding threads with one

Art Unit: 3733

another and turning said central member with respect to said knob, urging said central member axially along said lumen, whereby said segments are forced outwardly, and whereby said wall of said tunnel is dilated by said segments.

**Claim 13: Cancel Claim 13**

**Rejoinder of Claims**

Claims 1, 3-5 and 7-10 as amended are allowable. The restriction requirement mailed on February 6<sup>th</sup>, 2006, as set forth in the Office action mailed on March 7<sup>th</sup>, 2006, has been reconsidered. With the limitation of claim 13 being inserted into claim 11, the claim is no longer patentably distinct from claim 1. Thus claims 11 and 12 are rejoined. Claim 6 has limitations directed to a separate embodiment and thus conflicts with claim 1. Claim 6 is hereby cancelled as authorized by applicant's representative on December 18<sup>th</sup>, 2006.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
December 18<sup>th</sup>, 2006



EDUARDO C. ROBERT  
SENIOR PATENT EXAMINER